

WEST VIRGINIA INFORMATIONAL LETTER  
INSURANCE COMMISSIONER

No. 7  
May, 1973

PAYMENT OF COMMISSIONS

In 1972, the West Virginia Insurance Department examined the relationship between insurers and incorporated insurance agencies, and made an appraisal of that relationship, within the context of the insurance laws relating to payment of commissions. W.Va. Code, Chapter 33, Article 12, Section 24 (1931, as amended). It was determined that more than one hundred and fifty domestic incorporated insurance agencies existed in West Virginia at that time. Most, if not all, of these domestic corporations are parties to agency contracts with various insurers, which contracts recognize the corporate entity as the agent of record and provide for the payment of commissions directly to such corporations. Clearly, such contractual arrangements for the payment of commissions are expressly prohibited under the aforementioned section of the West Virginia Code, with the exception of life insurance, credit insurance, and several other types of coverage specifically exempted by the section. For more than one year, the insurance department diligently attempted to implement what it considered a viable alternative to the rigid enforcement of Section 24.

Recognizing the efficacy of the corporate form of business and its history in the marketing of insurance in West Virginia, the insurance department prepared, after consultation with representatives of various agent groups, an amendment to Section 24, which amendment would permit licensed resident agents to pay or to direct that their commissions be paid to corporations or other business entities with which they are affiliated. The insurance department arranged to have the amendment introduced in both the 1972 and 1973 Sessions of the West Virginia Legislature. In the regular 1973 Session, the amendment passed the House of Delegates, but died in the insurance committee of the Senate.

Accordingly, Section 24 will be enforced as written, and you are advised that the position of the Insurance Commissioner is as follows:

- (1) Only an individual may be licensed as an agent in West Virginia. W.Va. Code, Chapter 33, Article 12, Section 2 (1931, as amended). No corporation or business entity other than an individual has ever been licensed as an insurance agent in West Virginia;
- (2) The entire commission payable by any insurer on any insurance policy shall be paid directly to the licensed resident agent (an individual) who countersigns such policy, and not to a corporation or other business entity. W.Va. Code, Chapter 33, Article 12, Section 24 (1931, as amended);

- (3) The countersigning agent shall not pay any part of such commission to any person other than a licensed agent (an individual) or broker (an individual). It shall be unlawful for any insurer or agent to pay, and any person to accept, directly or indirectly, any commission except as herein provided. W.Va. Code, Chapter 33, Article 12, Section 24 (1931, as amended). Person includes an individual, corporation, insurer, etc. W.Va. Code, Chapter 33, Article 1, Section 3 (1931, as amended); and
- (4) Any existing agency contract wherein an insurer has appointed a person other than an individual as its agent and has promised to pay commissions to such person is unlawful, and such contract must be terminated. No such contract shall be executed in the future.

This letter shall not apply to reinsurance, life insurance, credit insurance, and other insurance specifically exempted under subsection (b) of Section 24.

Persons affected by this letter shall have until July 1, 1973, to comply with these provisions. At that date, the West Virginia Insurance Department will begin enforcement procedures, including appropriate penalties as provided by law in those instances where warranted.

Samuel H. Weese  
Insurance Commissioner